

1-1 By: Metcalf, et al. (Senate Sponsor - Creighton) H.B. No. 1510  
 1-2 (In the Senate - Received from the House April 20, 2021;  
 1-3 April 21, 2021, read first time and referred to Committee on  
 1-4 Jurisprudence; April 22, 2021, rereferred to Committee on Business  
 1-5 & Commerce; May 4, 2021, reported favorably by the following vote:  
 1-6 Yeas 7, Nays 0; May 4, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			

1-18 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to the response and resilience of certain electricity  
 1-21 service providers to major weather-related events or other natural  
 1-22 disasters; granting authority to issue bonds.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 36.402(a), Utilities Code, is amended to  
 1-25 read as follows:

1-26 (a) In this subchapter, "system restoration costs" means  
 1-27 reasonable and necessary costs, including costs expensed, charged  
 1-28 to self-insurance reserves, deferred, capitalized, or otherwise  
 1-29 financed, that are incurred by an electric utility due to any  
 1-30 activity or activities conducted by or on behalf of the electric  
 1-31 utility in connection with the restoration of service and  
 1-32 infrastructure associated with electric power outages affecting  
 1-33 customers of the electric utility as the result of any tropical  
 1-34 storm or hurricane, ice or snow storm, flood, or other  
 1-35 weather-related event or natural disaster that occurred in calendar  
 1-36 year 2008 or thereafter. System restoration costs include  
 1-37 mobilization, staging, and construction, reconstruction,  
 1-38 replacement, or repair of electric generation, transmission,  
 1-39 distribution, or general plant facilities. System restoration  
 1-40 costs shall include reasonable estimates of the costs of an  
 1-41 activity or activities conducted or expected to be conducted by or  
 1-42 on behalf of the electric utility in connection with the  
 1-43 restoration of service or infrastructure associated with electric  
 1-44 power outages, but such estimates shall be subject to true-up and  
 1-45 reconciliation after the actual costs are known. System restoration  
 1-46 costs include reasonable and necessary weatherization and  
 1-47 storm-hardening costs incurred, as well as reasonable estimates of  
 1-48 costs to be incurred, by the electric utility, but such estimates  
 1-49 shall be subject to true-up and reconciliation after the actual  
 1-50 costs are known.

1-51 SECTION 2. Chapter 36, Utilities Code, is amended by adding  
 1-52 Subchapter J to read as follows:

1-53 SUBCHAPTER J. LOWER-COST FINANCING MECHANISM FOR SECURITIZATION  
 1-54 FOR RECOVERY OF SYSTEM RESTORATION COSTS

1-55 Sec. 36.451. PURPOSE AND APPLICABILITY. (a) Except as  
 1-56 otherwise specifically provided by this subchapter, the same  
 1-57 procedures, standards, and protections for securitization  
 1-58 authorized by Subchapter I of this chapter and, to the extent made  
 1-59 applicable to Subchapter I of this chapter, by Subchapter G,  
 1-60 Chapter 39, apply to the lower-cost financing mechanism for  
 1-61 securitization of transition costs or system restoration costs as

2-1 provided by Subchapter I. To the extent of any conflict between the  
 2-2 provisions of this subchapter and Subchapter I of this chapter or,  
 2-3 to the extent made applicable by Subchapter I of this chapter,  
 2-4 Subchapter G, Chapter 39, in cases involving the securitization of  
 2-5 system restoration costs under this subchapter, the provisions of  
 2-6 this subchapter control.

2-7 (b) The purpose of this subchapter is to make available a  
 2-8 lower-cost, supplemental financing mechanism to allow an electric  
 2-9 utility operating solely outside of ERCOT to obtain timely recovery  
 2-10 of system restoration costs under Subchapter I through  
 2-11 securitization and the issuance of transition bonds or system  
 2-12 restoration bonds by an issuer other than the electric utility or an  
 2-13 affiliated special purpose entity. Financing of system restoration  
 2-14 costs under this subchapter is a valid and essential public  
 2-15 purpose.

2-16 (c) The Texas Electric Utility System Restoration  
 2-17 Corporation is created under this subchapter as a special purpose  
 2-18 public corporation and instrumentality of the state for the  
 2-19 essential public purpose of providing a lower-cost, supplemental  
 2-20 financing mechanism available to the commission and an electric  
 2-21 utility to attract low-cost capital to finance system restoration  
 2-22 costs.

2-23 (d) In approving securitization under this subchapter, the  
 2-24 commission shall ensure that customers are not harmed as a result of  
 2-25 any financing through the Texas Electric Utility System Restoration  
 2-26 Corporation and that any financial savings or other benefits are  
 2-27 appropriately reflected in customer rates.

2-28 (e) System restoration bonds issued under this subchapter  
 2-29 will be solely the obligation of the issuer and the corporation as  
 2-30 borrower, if applicable, and will not be a debt of or a pledge of the  
 2-31 faith and credit of the state.

2-32 (f) System restoration bonds issued under this subchapter  
 2-33 shall be nonrecourse to the credit or any assets of the state and  
 2-34 the commission.

2-35 (g) This subchapter does not limit or impair the  
 2-36 commission's jurisdiction under this title to regulate the rates  
 2-37 charged and the services rendered by electric utilities in this  
 2-38 state.

2-39 (h) An electric utility receiving the proceeds of  
 2-40 securitization financing under this subchapter is not required to  
 2-41 provide utility services to the corporation or the state as a result  
 2-42 of receiving such proceeds except in the role of the corporation or  
 2-43 the state as a customer of the electric utility. This subchapter  
 2-44 does not create an obligation of the corporation or an issuer to  
 2-45 provide electric services to the electric utility or its customers.

2-46 Sec. 36.452. DEFINITIONS. (a) In this subchapter:

2-47 (1) "Corporation" means the Texas Electric Utility  
 2-48 System Restoration Corporation.

2-49 (2) "Issuer" means the corporation or any other  
 2-50 corporation, public trust, public instrumentality, or entity that  
 2-51 issues system restoration bonds approved by a financing order.

2-52 (b) For the purposes of this subchapter, "qualified costs,"  
 2-53 as defined by Section 39.302 and as used in Subchapter G, Chapter  
 2-54 39, also includes all costs of establishing, maintaining, and  
 2-55 operating the corporation and all costs of the corporation and an  
 2-56 issuer in connection with the issuance and servicing of the system  
 2-57 restoration bonds, all as approved in the financing order.

2-58 (c) Except as otherwise specifically provided by this  
 2-59 subchapter, any defined terms provided by Subchapter I of this  
 2-60 chapter and, if made applicable by Subchapter I of this chapter,  
 2-61 Subchapter G, Chapter 39, have the same meaning in this subchapter.

2-62 Sec. 36.453. CREATION OF CORPORATION. (a) The corporation  
 2-63 is a nonprofit corporation and instrumentality of the state, and  
 2-64 shall perform the essential governmental function of financing  
 2-65 system restoration costs in accordance with this subchapter. The  
 2-66 corporation:

2-67 (1) shall perform only functions consistent with this  
 2-68 subchapter;

2-69 (2) shall exercise its powers through a governing

3-1 board;  
3-2 (3) is subject to the regulation of the commission;  
3-3 and  
3-4 (4) has a legal existence as a public corporate body  
3-5 and instrumentality of the state separate and distinct from the  
3-6 state.  
3-7 (b) Assets of the corporation may not be considered part of  
3-8 any state fund. The state may not budget for or provide any state  
3-9 money to the corporation. The debts, claims, obligations, and  
3-10 liabilities of the corporation may not be considered to be a debt of  
3-11 the state or a pledge of its credit.  
3-12 (c) The corporation must be self-funded. Before the  
3-13 imposition of transition charges or system restoration charges, the  
3-14 corporation may accept and expend for its operating expenses money  
3-15 that may be received from any source, including financing  
3-16 agreements with the state, a commercial bank, or another entity to:  
3-17 (1) finance the corporation's obligations until the  
3-18 corporation receives sufficient transition property to cover its  
3-19 operating expenses as financing costs; and  
3-20 (2) repay any short-term borrowing under any such  
3-21 financing agreements.  
3-22 (d) The corporation has the powers, rights, and privileges  
3-23 provided for a corporation organized under Chapter 22, Business  
3-24 Organizations Code, subject to the express exceptions and  
3-25 limitations provided by this subchapter.  
3-26 (e) An organizer selected by the executive director of the  
3-27 commission shall prepare the certificate of formation of the  
3-28 corporation under Chapters 3 and 22, Business Organizations Code.  
3-29 The certificate of formation must be consistent with the provisions  
3-30 of this subchapter.  
3-31 (f) State officers and agencies are authorized to render  
3-32 services to the corporation, within their respective functions, as  
3-33 may be requested by the commission or the corporation.  
3-34 (g) The corporation or an issuer may:  
3-35 (1) retain professionals, financial advisors, and  
3-36 accountants the corporation or issuer considers necessary to  
3-37 fulfill the corporation's or issuer's duties under this subchapter;  
3-38 and  
3-39 (2) determine the duties and compensation of a person  
3-40 retained under Subdivision (1), subject to the approval of the  
3-41 commission.  
3-42 (h) The corporation is governed by a board of five directors  
3-43 appointed by the commission for two-year terms.  
3-44 (i) An official action of the board requires the favorable  
3-45 vote of a majority of the directors present and voting at a meeting  
3-46 of the board.  
3-47 Sec. 36.454. POWERS AND DUTIES OF CORPORATION. (a) The  
3-48 corporation, in each instance subject to the prior authorization of  
3-49 the commission, shall participate in the financial transactions  
3-50 authorized by this subchapter. The corporation may not engage in  
3-51 business activities except those activities provided for in this  
3-52 subchapter and those ancillary and incidental thereto. The  
3-53 corporation or an issuer may not apply proceeds of system  
3-54 restoration bonds or system restoration charges to a purpose not  
3-55 specified in a financing order, to a purpose in an amount that  
3-56 exceeds the amount allowed for such purpose in the order, or to a  
3-57 purpose in contravention of the order.  
3-58 (b) The board of the corporation, under the provisions of  
3-59 this subchapter, may employ or retain persons as are necessary to  
3-60 perform the duties of the corporation.  
3-61 (c) The corporation may:  
3-62 (1) acquire, sell, pledge, or transfer transition  
3-63 property as necessary to effect the purposes of this subchapter  
3-64 and, in connection with the action, agree to such terms and  
3-65 conditions as the corporation deems necessary and proper,  
3-66 consistent with the terms of a financing order:  
3-67 (A) to acquire transition property and to pledge  
3-68 such transition property, and any other collateral:  
3-69 (i) to secure payment of system restoration

4-1 bonds issued by the corporation, together with payment of any other  
4-2 qualified costs; or  
4-3 (ii) to secure repayment of any borrowing  
4-4 from any other issuer of system restoration bonds; or  
4-5 (B) to sell the transition property to another  
4-6 issuer, which may in turn pledge that transition property, together  
4-7 with any other collateral, to the repayment of system restoration  
4-8 bonds issued by the issuer together with any other qualified costs;  
4-9 (2) issue system restoration bonds on terms and  
4-10 conditions consistent with a financing order;  
4-11 (3) borrow funds from an issuer of system restoration  
4-12 bonds to acquire transition property, and pledge that transition  
4-13 property to the repayment of any borrowing from an issuer, together  
4-14 with any related qualified costs, all on terms and conditions  
4-15 consistent with a financing order;  
4-16 (4) sue or be sued in its corporate name;  
4-17 (5) intervene as a party before the commission or any  
4-18 court in this state in any matter involving the corporation's  
4-19 powers and duties;  
4-20 (6) negotiate and become a party to contracts as  
4-21 necessary, convenient, or desirable to carry out the purposes of  
4-22 this subchapter; and  
4-23 (7) engage in corporate actions or undertakings that  
4-24 are permitted for nonprofit corporations in this state and that are  
4-25 not prohibited by, or contrary to, this subchapter.  
4-26 (d) The corporation shall maintain separate accounts and  
4-27 records relating to each electric utility that collects system  
4-28 restoration charges for all charges, revenues, assets,  
4-29 liabilities, and expenses relating to that utility's related system  
4-30 restoration bond issuances.  
4-31 (e) The board of the corporation may not authorize any  
4-32 rehabilitation, liquidation, or dissolution of the corporation and  
4-33 a rehabilitation, liquidation, or dissolution of the corporation  
4-34 may not take effect as long as any system restoration bonds are  
4-35 outstanding unless adequate protection and provision have been made  
4-36 for the payment of the bonds pursuant to the documents authorizing  
4-37 the issuance of the bonds. In the event of any rehabilitation,  
4-38 liquidation, or dissolution, the assets of the corporation must be  
4-39 applied first to pay all debts, liabilities, and obligations of the  
4-40 corporation, including the establishment of reasonable reserves  
4-41 for any contingent liabilities or obligations, and all remaining  
4-42 funds of the corporation must be applied and distributed as  
4-43 provided by an order of the commission.  
4-44 (f) Before the date that is two years and one day after the  
4-45 date that the corporation no longer has any payment obligation with  
4-46 respect to any system restoration bonds, including any obligation  
4-47 to an issuer of any system restoration bonds outstanding, the  
4-48 corporation may not file a voluntary petition under federal  
4-49 bankruptcy law and neither any public official nor any  
4-50 organization, entity, or other person may authorize the corporation  
4-51 to be or to become a debtor under federal bankruptcy law during that  
4-52 period. The state covenants that it will not limit or alter the  
4-53 denial of authority under this subsection or Subsection (e), and  
4-54 the provisions of this subsection and Subsection (e) are hereby  
4-55 made a part of the contractual obligation that is subject to the  
4-56 state pledge set forth in Section 39.310.  
4-57 (g) The corporation shall prepare and submit to the  
4-58 commission for approval an annual operating budget. If requested by  
4-59 the commission, the corporation shall prepare and submit an annual  
4-60 report containing the annual operating and financial statements of  
4-61 the corporation and any other appropriate information.  
4-62 Sec. 36.455. COMMISSION REGULATION OF CORPORATION. The  
4-63 commission shall regulate the corporation as provided by this  
4-64 subchapter and consistent with the manner in which it regulates  
4-65 public utilities. Notwithstanding the regulation authorized by  
4-66 this section, the corporation is not a public utility.  
4-67 Sec. 36.456. FINANCING ORDER. (a) This section applies to  
4-68 the commission's issuance of a financing order under this  
4-69 subchapter.

5-1           (b) Except as otherwise specifically provided by this  
 5-2 subchapter, the provisions of Subchapter I of this chapter and, to  
 5-3 the extent made applicable to Subchapter I of this chapter,  
 5-4 Subchapter G, Chapter 39, that address the commission's issuance of  
 5-5 a financing order apply to the commission's issuance of a financing  
 5-6 order under this subchapter.

5-7           (c) The corporation and any issuer must be a party to the  
 5-8 commission's proceedings that address the issuance of a financing  
 5-9 order along with the relevant electric utility.

5-10           (d) In addition to the requirements of Subchapter I, as  
 5-11 applicable, a financing order issued under this subchapter must:

5-12           (1) require the sale, assignment, or other transfer to  
 5-13 the corporation of certain specified transition property created by  
 5-14 the financing order in the manner contemplated by Section 39.308,  
 5-15 and, following that sale, assignment, or transfer, require that  
 5-16 system restoration charges paid under any financing order be  
 5-17 created, assessed, and collected as the property of the  
 5-18 corporation, subject to subsequent sale, assignment, or transfer by  
 5-19 the corporation as authorized under this subchapter;

5-20           (2) authorize:

5-21           (A) the issuance of system restoration bonds by  
 5-22 the corporation secured by a pledge of specified transition  
 5-23 property, and the application of the proceeds of those system  
 5-24 restoration bonds, net of issuance costs, to the acquisition of the  
 5-25 transition property from the electric utility; or

5-26           (B) the acquisition of specified transition  
 5-27 property from the electric utility by the corporation financed:

5-28           (i) by a loan by an issuer to the  
 5-29 corporation of the proceeds of system restoration bonds, net of  
 5-30 issuance costs, secured by a pledge of the specified transition  
 5-31 property; or

5-32           (ii) by the acquisition by an issuer from  
 5-33 the corporation of the transition property financed from the net  
 5-34 proceeds of transition bonds issued by the issuer; and

5-35           (3) authorize the electric utility to serve as  
 5-36 collection agent to collect the system restoration charges and  
 5-37 transfer the collected charges to the corporation, the issuer, or a  
 5-38 financing party, as appropriate.

5-39           (e) After issuance of the financing order, the corporation  
 5-40 shall arrange for the issuance of system restoration bonds as  
 5-41 specified in the financing order by it or another issuer selected by  
 5-42 the corporation and approved by the commission.

5-43           (f) System restoration bonds issued pursuant to a financing  
 5-44 order under this section are secured only by the related transition  
 5-45 property and any other funds pledged under the bond documents. No  
 5-46 assets of the state or electric utility are subject to claims by  
 5-47 such bondholders. Notwithstanding the provisions of Subchapter G,  
 5-48 Chapter 39, following assignment of the transition property, the  
 5-49 electric utility does not have any beneficial interest or claim of  
 5-50 right in such system restoration charges or in any transition  
 5-51 property.

5-52           Sec. 36.457. SEVERABILITY. Effective on the date the first  
 5-53 system restoration bonds associated with system restoration costs  
 5-54 are issued under this subchapter, if any provision in this title or  
 5-55 portion of this title is held to be invalid or is invalidated,  
 5-56 superseded, replaced, repealed, or expires for any reason, that  
 5-57 occurrence does not affect the validity or continuation of this  
 5-58 subchapter, Subchapter I of this chapter, as that subchapter  
 5-59 applies to this subchapter, Subchapter G, Chapter 39, as that  
 5-60 subchapter applies to this subchapter, or any part of those  
 5-61 provisions, or any other provision of this title that is relevant to  
 5-62 the issuance, administration, payment, retirement, or refunding of  
 5-63 system restoration bonds or to any actions of the electric utility,  
 5-64 its successors, an assignee, a collection agent, the corporation,  
 5-65 an issuer, or a financing party, and those provisions shall remain  
 5-66 in full force and effect.

5-67           SECTION 3. Section 37.056(c), Utilities Code, is amended to  
 5-68 read as follows:

5-69           (c) The commission shall grant each certificate on a

6-1 nondiscriminatory basis after considering:  
6-2 (1) the adequacy of existing service;  
6-3 (2) the need for additional service;  
6-4 (3) the effect of granting the certificate on the  
6-5 recipient of the certificate and any electric utility serving the  
6-6 proximate area; and  
6-7 (4) other factors, such as:  
6-8 (A) community values;  
6-9 (B) recreational and park areas;  
6-10 (C) historical and aesthetic values;  
6-11 (D) environmental integrity;  
6-12 (E) the probable improvement of service or  
6-13 lowering of cost to consumers in the area if the certificate is  
6-14 granted, including any potential economic or reliability benefits  
6-15 associated with dual fuel and fuel storage capabilities in areas  
6-16 outside the ERCOT power region; and  
6-17 (F) to the extent applicable, the effect of  
6-18 granting the certificate on the ability of this state to meet the  
6-19 goal established by Section 39.904(a) of this title.  
6-20 SECTION 4. Section 37.058, Utilities Code, is amended by  
6-21 adding Subsection (e) to read as follows:  
6-22 (e) Notwithstanding any other provision of this title, an  
6-23 electric utility operating solely outside of the ERCOT power region  
6-24 may, but shall not be required to, obtain a certificate to install,  
6-25 own, or operate a generation facility with a capacity of 10  
6-26 megawatts or less.  
6-27 SECTION 5. This Act takes effect immediately if it receives  
6-28 a vote of two-thirds of all the members elected to each house, as  
6-29 provided by Section 39, Article III, Texas Constitution. If this  
6-30 Act does not receive the vote necessary for immediate effect, this  
6-31 Act takes effect September 1, 2021.

6-32 \* \* \* \* \*